IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7476 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHAMBHAT TAL.CO OP PURCHASE AND SALE UNION LTD. & 6 - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR PS CHAMPANERI for Petitioner(s) : 1 - 7.
MS MANISHA L SHAH AGP for Respondent(s) : 1 - 2, 4,
MR DM THAKKAR for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/11/2006

ORAL JUDGMENT

1. Petitioners are various categories of Cooperative Societies who were admitted to the membership of respondent no.3-society. Issues in this petition pertain to removal of the petitioner societies by the District Registrar in exercise of powers under sub section (1) of section 23 of the Gujarat Cooperative Societies Act (herein after referred to as the said Act)

2. Shortly stated, facts leading to the present petition are as follows:

2.1. Petitioners became members of respondent no.3-society during periods ranging from 1968 to 1979. It is the case of the petitioners that at the relevant time the petitioners fulfilled all required qualifications for being members of respondent no.3-society as per the then existing bye-laws.

2.2. Apparently for holding elections of respondent no.3-society in the year 1999, the Election Officer had certain doubts about

continuation of the petitioners as voters in the voters list of respondent no.3-society. Origination of this doubt of the Election Officer was on account of amendments made in bye-law no.4(6) of respondent no.3-society which provided for qualifications for admitting a person or a society in the membership of respondent no.3. As per the amended bye-laws so amended in the year 1984, the area of operation was restricted to Khambhat Municipal limit and was confined to certain class of society.

2.3. Election officer, therefore, sought clarification from the Government authorities in this regard. It was on the basis of this correspondence that the District Registrar issued notice to the petitioners on or around 31st July, 1999 indicating that they do not fulfill the requirement of bye-law no.4(6) and that, therefore, they are liable to be removed from the membership of the society in exercise of powers u/s 23(1) of the said Act.

2.4. The petitioners opposed the proposal and made representation. District Registrar however, by

his impugned order dated 9th September, 1999 ordered removal of the petitioners from the membership of respondent no.3-society.

3. Briefly stated, the case of the petitioners before this Court is that they were admitted to respondent no.3-society long before the bye-laws and in particular bye-law no.4(6) came to be amended in the year 1984. It is the case of the petitioners that they fulfilled all the requirements as prevailing at the time when they were so admitted to membership of respondent no.3-society. It is the case of the petitioners that subsequently though bye-law no.4(6) was amended in the year 1984 to limit the membership of respondent no.3-society, powers under sub section (1) of section 23 of the said Act cannot be exercised to remove the petitioners from the membership of the society.

4. Learned advocate Shri Champaneri placed on record a communication dated 23rd June, 1999 from the Election Officer made to District Registrar, reference to which has also been made in the impugned

order.

5. From the perusal of the said order, it can be seen that the Election Officer also pointed out that the petitioners were admitted to the membership of respondent no.3-society under the unamended bye-laws. They however do not fulfill the requirements of the amended bye-law no.4(6) which bye-law came to be amended in the year 1984.

6. Short question is whether in view of these factual parameters, it was open for the District Registrar to exercise powers u/s 23(1) of the said Act.

7. Section 23 (1) of the said Act reads as follows:

> “23.(1) Where a person becomes a member of any society on his making a declaration as required by the bye-laws of the society or otherwise and such declaration is found to be false, then such person shall be disqualified to continue as a member of the society.”

8. It is not in dispute that the Registrar in purported exercise of powers under sub section (1) of

section 23 of the said Act had passed the impugned order. Such powers of removal can be exercised when the person is found to have become member of any society on his making a declaration as required by the bye-laws of the society or otherwise and when such declaration is found to be false. In the present case there is no finding in the impugned order that the petitioners made any false declaration for becoming member of respondent no.3-society. Even otherwise, it does not appear to be the case of the respondents that when the petitioners applied and were admitted to the membership of respondent no.3-society, they were either disqualified or had rlied on any false declaration to seek such membership. In that view of the matter, the Registrar could not have removed the petitioners from the membership of respondent no.3-society in exercise of powers under sub section (1) of section 23 of the said Act. The view I have taken herein above finds support from the decision of learned Single Judge of this Court in the case of Vikrambhai Dhirajibhai Patel vs. A.S.Jog, District Registrar, Cooperative Societies, Mehsana & Anr. reported in 1989(1) GLR page 690. Whether the

petitioners can continue to enjoy membership of respondent no.3-society in view of the amended bye-laws and what would be the mode of discontinuation of the petitioners from the membership, if at all, are issues not at large before this Court. Such questions are kept open. However, in view of the discussion herein above, impugned order cannot be sustained. The same is quashed. Rule is made absolute. No costs.

(Akil Kureshi, J.)

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